

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking on the Review of the
California High Cost Fund B Program

Rulemaking 06-06-028
(Filed June 29, 2006)

**MOTION OF THE UTILITY REFORM NETWORK TO IMPLEMENT A PROCESS TO
ELICIT PUBLIC INPUT ON POSSIBLE CHANGES IN BASIC SERVICE AS A
RESULT OF REVERSE AUCTIONS IN HIGH COST AREAS**

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February 19, 2008

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In accordance with Rule 11.1 of the Commission’s Rules of Practice and Procedure, The Utility Reform Network (“TURN”) hereby files this motion requesting the Commission to seek input from customers who may be affected by any changes to the existing elements of basic service as a result of the reverse auction process ordered in Decision (“D” 07-09-020).

I. Introduction

In D.07-09-020, the Commission determined that it would use a reverse auction process to select a carrier of last resort (“COLR”) and to set the levels of support in high-cost areas currently supported by the California High Cost Fund B. To assist in designing the reverse auction process, the Commission established three working groups comprised of interested parties and a moderator from the Commission’s Communications Division. The working groups are: Working Group 1 “Service Provider Eligibility Requirements”; Working Group 2 “Bidding

Protocols”; and Working Group 3 “Defining the Geographic Area(s) Within Which a Bid Would Apply.”¹ Working Groups 2 and 3 were subsequently combined.

The purpose of Working Group 1 (“WG1”) is to “consider what specific eligibility criteria and service quality commitments should be required as a basis to participate in reverse auction bidding.”² The Assigned Commissioner’s Ruling (“ACR”) has expressed the expectation that “we will revise our COLR requirements to be competitively and technologically neutral...”³ In particular, the Commission has instructed that WG1

should address how the definition of basic services required to be offered by the COLR should be revised so as to provide for wireline, wireless and other nontraditional voice carriers to qualify as bidders for COLR status in the reverse auction. The working group should also address what minimum service(s) and attributes should be included within the bid covered by the reverse auction? Also, what limitations or conditions should be placed on service(s) that may be included within (or excluded from) the evaluation of the bid...The working group should address what service quality, pricing, and reliability standards and commitments should be placed as a condition of serving as COLR⁴

The ACR would have the Commission head down a path where potential modifications to the definition of basic service would be crafted by a small number of participants in these working groups dominated by industry representatives rather than through the Commission’s long established practice of taking evidence, soliciting public input, and issuing a decision based upon that information. During the working group discussions it has become evident that the process could result in basic service being redefined such that Californians would lose elements of what they currently expect from their basic service. Perhaps even more significant, is the potential that consumers in high cost areas may wind up with basic service that is of lower quality and reliability than the service they enjoy today. If the Commission were to act on such

¹ Assigned Commissioner’s Ruling To Design And Implement A Reverse Auction Mechanism (12/13/07) pp. 4-9 (“ACR”).

² ACR, p. 4.

³ ACR, p. 5.

⁴ ACR, p. 5.

recommendations after the working group process, the customers who rely on telephone service would have had no opportunity to have a direct voice in this process. This motion seeks to ensure that the Commission creates a meaningful opportunity for those customers to make clear their expectations and needs before the agency embarks on any path that will affect the panoply of services and functions incorporated in “basic phone service.” After all, the goal here is not to modify the definition of basic phone service in order to enable implementation of a reverse auction; rather, it is designing the appropriate mechanism for achieving continuing availability of affordable, high-quality basic phone service throughout all of California.

II. DISCUSSION

In Rulemaking (“R”) 95-01-020 (*Re Universal Service and Compliance with the Mandates of Assembly Bill 3643*), the Commission issued an Interim Decision (D.95-07-020) and a Final Decision (D.96-10-066) discussing, *inter alia*, the definition of basic universal service and the criteria for changes in that definition. The Commission stated that “the definition of basic service should be thought of in terms of what is a minimum level of service that consumers have come to expect, or what services are essential to all residential telephone customers.”⁵

Responding to proposals by Pacific Bell and GTE, the Commission stated that “the large LEC's advocate a minimal nationwide definition which in many respects represents a retreat from established Commission policy.”⁶

In D. 96-10-066 the Commission identified sixteen service elements that together comprise basic service. In doing so, the Commission reiterated that “residential customers have

⁵ D.95-07-050, 1995 Cal. PUC LEXIS 600, *20

⁶ D.95-07-050, 1995 Cal. PUC LEXIS 600, *23-24.

come to expect a certain minimum level of basic local exchange telephone service (basic service).”⁷ The Commission went on to explain its action:

We believe that it is important to adopt a uniform definition of basic service so that all residential telephone customers, no matter where they live in California, or what their level of income is, can expect a certain minimum level of service. This is especially important in a mobile society where people may move across town, or from one part of the state to another. For the vast majority of telephone customers, they have come to expect and rely on the service elements that we listed in D.95-07-050.⁸

As part of the process for determining what would constitute basic service, the Commission held 13 public participation hearings (“PPHs”) in September and October 1995. The PPHs were co-hosted by the Commission and the California State and Consumer Services Agency (“SCSA”) and were held in various rural and urban parts of the state.⁹ In addition, the Commission considered the numerous letters that were submitted. The PPHs were an important part of the process to inform the Commission’s decision-making regarding what constitutes basic service. For example, in rejecting the elimination of flat rate service (as proposed by Pacific Bell and AT&T Wireless) the Commission relied in part on the information directly provided by consumers:

At the PPHs, many consumers expressed satisfaction with having a choice of flat or measured rate service. Depending on their circumstances, some preferred measured rate service, while others preferred flat rate service. The flat and measured rate options preserve customer choice, and provide consumers with a method by which to comparison shop among carriers. We believe that if wireless providers desire to compete in the local exchange market, they should be required to offer basic service in the same type of pricing formats that are offered today by wireline carriers.¹⁰

⁷ D.96-10-066, 1996 Cal. PUC LEXIS 1046, *37.

⁸ D.96-10-066, 1996 Cal. PUC LEXIS 1046, *25-26.

⁹ D.96-10-066, 1996 Cal. PUC LEXIS 1046, *11-12.

¹⁰ D.96-10-066, 1996 Cal. PUC LEXIS 1046, *41.

During the 12 years that have passed since the Commission decision establishing the definition of basic service no evidence has been presented that would even suggest that consumers expect any less from their basic service than they did in 1996. The only reasonable way for the Commission to gather evidence regarding consumers' current expectations from basic service would be to ask those consumers who would be most directly affected by any modifications of the basic service.

Since 1996 the Commission has had several opportunities to consider the parameters of basic service. Each of these instances supports the conclusion that the Commission should seek broad public input when contemplating significant changes in universal basic service.

In 2000 the California Legislature passed Senate Bill ("SB") 1712 (adding P.U. Code Sections 871.7 and 883) requiring the Commission to investigate the feasibility of redefining universal telephone service to include high-speed internet access. Section 883(a) required that the Commission hold

...public hearings that encourage participation by a broad and diverse range of interests from all areas of the state, including, but not limited to the following:

- (1) Consumer groups.
- (2) Communication service providers, including all providers of high-speed access services.
- (3) Facilities-based telephone providers.
- (4) Information service providers and Internet access providers.
- (5) Rural and urban users.
- (6) Public interest groups.
- (7) Representatives of small and large businesses and industry.
- (8) Local agencies.
- (9) State agencies, including, but not limited to, all of the following:
 - (A) The Business, Transportation and Housing Agency.
 - (B) The State and Consumer Services Agency.
 - (C) The State Department of Education.
 - (D) The State Department of Health Services.
 - (E) The California State Library.
- (10) Colleges and universities.¹¹

¹¹ P.U. Code Section 883(a).

In May 2001 the Commission instituted R.01-05-046 to comply with the directives of SB 1712. To fulfill the requirement for public input required by the legislation, the Commission mailed a copy of the Order Instituting Rulemaking (“OIR”) not only to existing parties and all telecommunications companies, but also to “all cities and counties” as well as to the Trade and Commerce Agency and Department of Information Technology (as well as the agencies specified in the statute).¹² The Commission also held public participation hearings throughout the state. Notably, the Commission encouraged interested parties to not only provide their views on whether to re-define universal service to include internet access, but also to propose any recommended changes to the rules adopted in D.96-10-066 regarding the definition of basic service.¹³

Once again in 2003 the Commission was instructed to encourage broad public participation in deliberations relating to the deployment of advanced telecommunications technologies. SB 1563 (adding P.U. Code Section 709) directed the Commission to convene a proceeding to develop a plan “for encouraging the widespread availability and use of advanced communications infrastructure.”¹⁴ In addition to seeking participation by a “broad cross section of the communications industries, including those entities that the commission does not regulate,” the Commission was directed to encourage participation by “users and community representatives...and by community-based organizations, including, but not limited to, nonprofit community technology programs and libraries that have demonstrated success in assisting low-

¹² *Rulemaking on the Commission’s Own Motion to Comply with the Mandates of SB 1712* (filed 5/24/01), R.01-05-046, pp. 12-13.

¹³ *Rulemaking on the Commission’s Own Motion to Comply with the Mandates of SB 1712* (filed 5/24/01), R.01-05-046, pp. 5 & 7.

¹⁴ P.U. Code Section 709.3(a)(1).

income residents in bridging the digital divide.”¹⁵ In R.03-04-003, the Commission served notice of the proceeding on “CBOs and libraries that have participated in the California Teleconnect Fund programs and others for whom we have information.”¹⁶ In addition, all cities and counties in the state as well as all the state agencies served in R.01-05-046 (discussed above) were notified. The Commission also held workshops and community meetings to solicit broad input.¹⁷

Not only would seeking direct consumer input be the fair and equitable course of action, it would be the course most consistent with the Public Utilities Code (“P.U. Code”). P.U. Code Section 1708 provides that the Commission may amend its own decisions upon notice to parties. Section 1708.5(f) creates an additional responsibility for amending decisions where the subject matter being amended “was adopted after an evidentiary hearing, in which case the parties to the original proceeding shall retain any right to an evidentiary hearing accorded by Section 1708.” While technically speaking the basic service definition was not adopted after an evidentiary hearing, the Commission did solicit significant public input. The spirit of 1708.5(f) certainly suggests that the Commission should do no less now if there is any chance that it will adopt a definition of basic service that is different than the one adopted in the earlier decisions. This is especially so when affected consumers will potentially be receiving a lesser grade of service at a potentially higher price.

Since 1995, whenever it has contemplated major changes in what constitutes universal basic service, the Commission has proactively sought out the views of the California consumers by conducting public hearings in a wide variety of communities. Yet, in the instant proceeding where fundamental changes in the elements comprising basic service are being considered, no

¹⁵ P.U. Code Section 709.3(a)(1).

¹⁶ *Order Instituting Rulemaking on the Commission’s Own Motion to Comply with the Mandate of Senate Bill 1563 regarding Deployment of Advanced telecommunications Technologies*, R.03-04-003 (4/3/03), 2003 Cal. PUC LEXIS 281,*10.

process has been implemented for public input. Pursuant to P.U. Code §709, the potential impact of limitations to basic service, and reduced reliability of basic service, as a result of high cost auctions is certainly as important as the consideration of expanding basic service to include internet access or ways the Commission can encourage advanced technologies. If public input was deemed essential in those cases it should certainly be considered crucial now. Such input is particularly critical in the instant case given the potential for reduced reliability of basic service. Previous Commission consideration of changes in basic service did not raise issues of reliability since in those instances standard reliability was that provided by the traditional, highly reliable wireline network. One of the stated objectives of the reverse auction process is that wireline, wireless and other nontraditional voice carriers be able to qualify as bidders for COLR status.¹⁸ TURN doubts whether wireless and other nontraditional voice services are as reliable as traditional wireline service. If public input was deemed important when the elements of basic service were being deliberated, then potential changes in reliability make such input even more essential.

III. TURN PROPOSAL FOR CONSUMER INPUT

PPHs can be a useful vehicle to obtain consumer input. However, under the circumstances here they may be only one of several methods the Commission should employ in the current proceeding. Any change in the definition of basic service for high cost areas will have the most direct effect on rural consumers and communities. The Commission could target communities such as Barstow, Eureka and Volcano (all locations of PPHs in 1995 when the Commission sought input for the definition of basic service). But the broader challenge for the Commission is how to effectively reach those consumers who are most likely to be affected by

¹⁷ D.05-05-013, p. 2.

the changes the Commission is contemplating, including those for whom towns like Barstow, Eureka, and Volcano are the only-occasionally-visited “big city.”

The magnitude of this challenge is amply demonstrated by the map attached to this Motion (Attachment A). That map depicts the 1990 high cost census block groups (“CBGs”) that are above the \$36.00 benchmark established by the Commission and thus could be subject to the reverse auction process. According to analysis conducted by TURN which matched 1990 CBGs associated with high-cost designation with 2005 population estimates available from the Census Bureau, the median population density in representative high-cost CBGs is 27 persons per square mile, compared to a median population density for all California CBGs of 7,041 persons per square mile.¹⁹ Thus, it is clear that the historical approach of having PPHs in larger metropolitan areas would most likely not successfully solicit input from consumers more rural locations.

TURN recommends that the Commission institute a workshop specifically designed to develop a plan to reach those consumers and communities that will most impacted by the reverse auction process. The outputs of this workshop should include:

- Identification of specific target locations for outreach;
- A communications plan designed to elicit from consumers which elements of basic service they value, whether there are any elements they might be willing to give up, what quality and reliability they expect from their basic service and what price they think is reasonable to pay for such service;

¹⁸ ACR, p. 5.

¹⁹ TURN has prepared overlay maps which show that California 1990 CBG boundaries for most high-cost areas are unchanged in the 2000 Census, however, the Census Bureau’s renumbering of CBGs resulted in only 579 high-cost CBGs having the same CBG numbers across the 1990 and 2000 census. TURN’s analysis is based on the 579 high-cost CBGs for which 2005 data was available from the Census Bureau.

- What organizations the Commission should partner with to have the most effective public participation (e.g., CBOs, SCSA, other state agencies county and city governments, and emergency service agencies); and
- The procedural tools the Commission should employ to reach affected consumers (e.g., PPHs, community meetings, workshops, and meetings with local elected officials).

TURN is sensitive to the Commission's desire to fast track the reverse auctions.

However, the elements, reliability and quality, and affordability of universal basic service are too fundamental and important to all consumers to sacrifice to expediency.

For the reasons stated above, TURN respectfully requests that the Commission promptly implement our recommended process to ensure that the public has full opportunity to provide input to the Commission regarding potential changes in basic service.

Respectfully submitted,

William R. Nusbaum
Senior Telecommunications Attorney

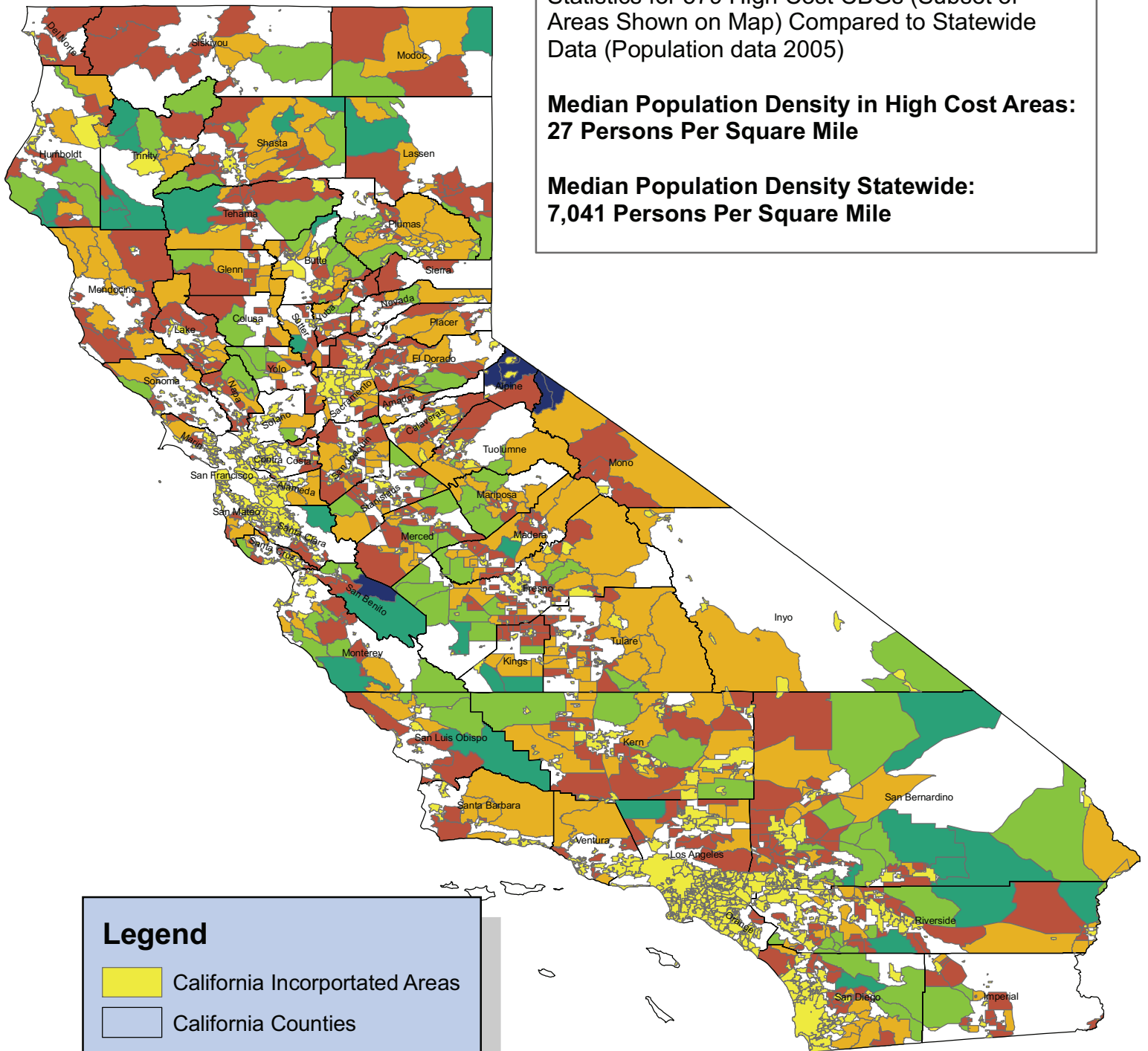
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ATTACHMENT A

Statistics for 579 High Cost CBGs (Subset of Areas Shown on Map) Compared to Statewide Data (Population data 2005)

**Median Population Density in High Cost Areas:
27 Persons Per Square Mile**

**Median Population Density Statewide:
7,041 Persons Per Square Mile**



Legend

California Incorporated Areas

California Counties

1990 High Cost CBGs

Total Cost

\$36.04 - \$45.41

\$45.42 - \$60.09

\$60.10 - \$84.86

\$84.87 - \$140.91

\$140.92 - \$226.12

CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On February 19, 2008 I served the attached:

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on all eligible parties on the attached lists to **R.06-06-028**, by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this February 19, 2008, at San Francisco, California.

/S/

Larry Wong

Service List for R.06-06-028

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